

**MINUTES OF THE OPEN SESSION  
OF THE RHODE ISLAND ETHICS COMMISSION**

**January 10, 2012**

**The Rhode Island Ethics Commission held its 1st meeting of 2012 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, January 10, 2012, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.**

**The following Commissioners were present:**

**Ross Cheit, Chair   Mark B. Heffner\***

**Deborah M. Cerullo SSND, Vice Chair   John M. LaCross**

**J. William W. Harsch, Secretary\*\*   John D. Lynch, Jr.**

**Frederick K. Butler   Edward A. Magro\*\*\***

**Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Staff Attorneys Jason Gramitt, Nicole B. DiLibero and Amy C. Stewart; and Commission Investigators Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.**

**At 9:06 a.m. the Chair opened the meeting. The first order of**

**business was a motion to approve minutes of the Open Session held on December 13, 2011. Upon motion made by Commissioner Magro and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To approve minutes of the Open Session held on December 13, 2011.**

**ABSTENTIONS: John M. LaCross.**

**The next order of business was advisory opinions. The advisory opinion was based on a draft advisory opinion prepared by the Commission Staff for review by the Commission and was scheduled as an item on the Open Session Agenda for this date. The advisory opinion was that of:**

**Jane B. Sherman, a member of the Rhode Island Transportation Advisory Committee, a state appointed position, who is also a member of the Rhode Island Board of Governors for Higher Education, a state appointed position, requesting an advisory opinion regarding whether, in her capacity as a member of the Transportation Advisory Committee, she may participate in discussions and votes that concern funding for institutions under the jurisdiction of the Board of Governors for Higher Education.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Upon motion made by**

**Commissioner Butler and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Jane B. Sherman, a member of the Rhode Island Transportation Advisory Committee, who is also a member of the Rhode Island Board of Governors for Higher Education.**

**At approximately 9:11 a.m., upon motion made by Commissioner Cerullo and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4), to wit:**

**a) Motion to approve minutes of Executive Session held on December 13, 2011, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**b) In re: Frank Sylvester, Complaint No. 2011-2, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**c) Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission et al., C.A. No. PC 11-6938.**

**The Commission reconvened in Open Session at approximately 9:25 a.m.**

**\* Commissioner Heffner arrived at approximately 9:13 a.m.**

**\*\* Commissioner Harsch arrived at approximately 9:14 a.m.**

**Chair Cheit reported that the Commission took the following actions in Executive Session: 1) unanimously voted, with one abstention, to approve the minutes of the Executive Session held on December 13, 2011; 2) unanimously approved a first extension of time in In re: Frank Sylvester, Complaint No. 2011-2; and 3) received an update on Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission et al., C.A. No. PC 11-6938.**

**The next order of business was a Public Hearing on, and motion to adopt, proposed regulatory amendments to Commission Regulation 36-14-5009 (“Regulation 5009”) – “Gifts.” Staff Attorney Gramitt provided a brief historical background, noting a confusing article in the Providence Journal published on January 9, 2012. He explained that Regulation 5009 was originally adopted in 1998 and prohibited all gifts, of any value, from an interested person to a person subject to the Code. He informed that there was extensive opposition to this zero tolerance rule. Then, in 2001, Regulation 5009 was amended to allow certain gifts of \$150 or less from an interested person, not to exceed \$450 in aggregate from a single interested person during the course of the year. At the same time, the Commission added the disclosure requirement for gifts over \$100 as a safety valve because it was now permitting more expensive gifts. Public officials were**

required to file the gift disclosure annually in January, which was separate and apart from the Financial Disclosure Statement.

Staff Attorney Gramitt added that in April of 2005, the Commission amended Regulation 5009, finding a middle ground between zero tolerance and the \$150/\$450 limit by instituting a \$25 limit from a single interested person, not to exceed an aggregate of \$75 per year from that person. Given that expensive gifts were no longer allowed, the Commission removed the disclosure requirement. He informed that the 2005 revisions to Regulation 5009 occurred mid-year resulting in the disclosure requirement remaining in effect for all gifts received prior to the amendment taking effect. As such, the disclosure requirement remained in the Code, with language indicating that it was only applicable to gifts received prior to the amendment.

Staff Attorney Gramitt explained that the amendment presently before the Commission was a technical revision to delete language that is no longer operative in paragraphs (f) and (g). In response to Chair Cheit, Staff Attorney Gramitt stated that these provisions resulted in confusion as revealed in yesterday's Providence Journal article and occasional phone calls to Commission Staff inquiring about gift disclosure requirements. He also noted that although rulemaking was not required for this technical amendment, the Commission preferred to enter into formal rulemaking in the interest of transparency.

Commissioner Harsch asked if Regulation 5009 applied to members of the General Assembly after the Irons decision. Staff Attorney Gramitt replied that the Commission still has jurisdiction over General Assembly members with respect to gifts and revolving door because such things do not involve core legislative acts. Chair Cheit added that the Code only concerns gifts given to a public official from an interested person.

Staff Attorney Gramitt stated that Regulation 5009 is enforced through the complaint process, where complaints are filed by the members of the public or by the Commission investigators after receiving reliable information from tips or news articles. He noted that he did not recall a gift disclosure ever resulting in a complaint.

Staff Attorney Gramitt clarified that Question 10 on the Financial Disclosure Statement requires disclosure of gifts over \$100 from any single interested person. He stated that this requirement comes from the statute delineating the contents of the Financial Disclosure Statement. He noted, however, that such a disclosure would amount to an admission that such person violated Regulation 5009. Commissioner Harsch stated that Question 10 serves as a yearly reminder to the persons filing Financial Disclosure Statements that there is a gift regulation. Commissioner Cerullo concurred and stated that she believed that a reminder in some form is valuable each year.

Chair Cheit responded that Question 10 is somewhat misleading because it asks people to report gifts that are illegal. He suggested that Question 10 should be changed. Staff Attorney Gramitt stated that Question 10 is there because of a statutory requirement. He said that the Commission has the ability to amend the Financial Disclosure Form, but it need not be through a rulemaking process. Chair Cheit stated that Question 10 should be changed to reduce confusion between the \$100 gift disclosure on the Financial Disclosure Statement and the \$25/\$75 limits set by Regulation 5009. Commissioner Butler agreed with Chair Cheit and added that he finds Question 10 to be potentially harmful because it could give the impression that gifts under \$100 are permitted. Chair Cheit directed Commission Staff to look at revising Question 10 and to schedule it for discussion at an upcoming meeting.

Staff Attorney Gramitt stated that notice of the proposed amendment was posted more than 30 days before this hearing on the Rhode Island Secretary of State's website, on the Commission's website, and also sent via email to the list of people and organizations that regularly receive our agenda. He informed that the Commission did not receive any written comment.

Chair Cheit opened the floor for public comment. John Marion, of Common Cause Rhode Island, was the only person who signed up to speak. He informed that he received the notice of rulemaking by email, which included the notice and the proposed amendments. He

complimented the Commission Staff for consistently sending out timely emails for meeting agendas and rulemaking. He stated that Common Cause had no objection to this amendment and regarded it as an appropriate housekeeping edit for Regulation 5009. He stated that he believes the confusion over the gift regulation is related, in part, to the discrepancy between the \$25/\$75 limit in Regulation 5009 and the \$100 listed in Question 10 in the Financial Disclosure Statement. He stated that if Question 10 remains on the form, it should have a \$25 limit. He added that lifting the disclosure seems to be a reasonable step in conjunction with the \$25 limit.

Chair Cheit directed Commission Staff to revisit the disclosure form as soon as possible. In response to Commissioner LaCross, Staff Attorney Gramitt stated that the Financial Disclosure Statements for calendar year 2011 will be sent out in the middle of March 2012, and noted that they have already been printed. Commissioner Lynch suggested including an insert with the Financial Disclosure Statement reminding people of the \$25/\$75 gift limit. Chair Cheit agreed and stated that we should address this as soon as possible for this year in the hope of eliminating any further confusion. With no one else interested in speaking, Chair Cheit closed the public hearing.

Commissioner Cerullo stated that after considering the amendments proposed for Regulation 5009 and the public comment received, she moved that the Ethics Commission find: that there was no alternative



approach to the amended regulation which would be as effective and less burdensome to affected private persons; that no other state regulation which is overlapped or duplicated by this proposed amended regulation has been identified; that no indication that the amended regulation would have a significant economic impact on small business has been received; and that Amended Regulation 5009 – Gifts be adopted. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Magro, it was unanimously

**VOTED:** To adopt Regulation 5009 – Gifts, as amended.

The next order of business was a public hearing regarding proposed amendments to Commission Regulation 36-14-5002 (“Regulation 5002”) – “Additional Circumstances Warranting Recusal.” Staff Attorney Gramitt informed that the outdated language of this Regulation became apparent during the meetings of the Union Regulation Subcommittee last spring. He explained that the proposed amendment made the language gender neutral and used language that comported with the nepotism provisions in Regulation 5004. Additionally, he stated that the amendment made the interaction of Regulation 5002 and R.I. Gen. Laws § 36-14-5(f) clearer.

Staff Attorney Gramitt began by introducing the proposed changes to subsection (a). First, he said that changes to paragraph (a)(1) are to

comport with Regulation 5004 regarding nepotism. Second, he stated that changes to paragraph (a)(2) are specific to business associates and comport with § 36-14-5(f). Finally, he said that changes to paragraph (a)(3) are in the event that a family or household member, business associate or employer, of the person subject to the Code, authorizes someone else to appear on their behalf.

With respect to subsection (b), Staff Attorney Gramitt explained that the current rule sometimes requires recusal in situations where the conduct is not necessarily objectionable. He explained that paragraph (b)(1) would create an exception where the business associate, employer, household member, or any person within the public official's family appears or presents evidence or argument before the person's agency solely in an official capacity as a duly authorized representative of a state or municipal agency, and whose appearance will not result in a personal financial benefit. He informed that this codifies the Commission's reasoning in the two prior advisory opinions that had been issued to the Coulters.

Commissioner Heffner asked how paragraph (b)(1) would apply hypothetically to his wife, who is an attorney, if she appeared before the Commission representing a client. Staff Attorney Gramitt replied that this exception would not apply because his wife's representation of a private client would not be as a duly authorized representative of a state or municipal agency. He stated that the exception may apply if, for example, Commissioner Heffner's wife was a Providence City

**Solicitor representing the City, as long as there was no personal financial gain.**

**Chair Cheit inquired if “authorized” was defined as to hire or engage. Staff Attorney Gramitt replied that “authorized” is defined by the common dictionary definition and that it does not have to encompass a financial arrangement.**

**Commissioner Cerullo stated that paragraph (b)(1) is appropriate where two municipal entities are working together to come up with a budget solution. However, she expressed concern with the application to a situation where someone is advocating before a board on which their family member or employer sits, as in Commissioner Heffner’s example. She said that she was concerned about undue influence. Staff Attorney Gramitt stated that her points were well taken and that he had not anticipated Commissioner Heffner’s example. He stated that he considered more informational, workshop settings. Commissioner Heffner agreed with Commissioner Cerullo and stated that he would like further review of Regulation 5002(b) but is comfortable with the changes to Regulation 5002(a).**

**Staff Attorney Gramitt returned to his explanation of the proposed changes subsection (b). He stated that paragraph (b)(2) provides an exception for the business associate, employer, household member, or any person within the public official’s family to appear at a public**

forum to offer comment on a matter of public concern, provided that all other members of the public have opportunity to comment and that there is no direct financial impact or employment advantage to the speaker.

Chair Cheit opened up the floor to public comment. John Marion, of Common Cause Rhode Island, was the only person who signed up to speak. He said that Common Cause supports the amendment of Regulation 5002 to bring it in line with the nepotism language. He indicated that the nepotism section of the Code is seen as a national model, referring specifically to recent articles in the New York Times that discussed lobbying in Chicago. With respect to Regulation 5002(a), he was satisfied with the housekeeping amendments. He also stated that he agreed with the Coulter advisories and would support subsection (b) conforming to that reasoning. He noted however paragraph (b)(2) raises some issues as to people who are engaged in financial relationships with a board member. He suggested that the Commission take a step back with subsection (b) and consider further revisions to it.

After some discussion, Staff Attorney Gramitt suggested an addition to line 16 of Regulation 5002(a)(3), adding after authorizes “on his or her behalf,” to which there was no objection. Then, with no one else interested in speaking, Chair Cheit closed the public hearing.

Commissioner Cerullo said that after considering the amendments

proposed for Regulation 5002(a) only, and the public comment received, she moved that the Ethics Commission find: that there was no alternative approach to the amended regulation which would be as effective and less burdensome to affected private persons; that no other state regulation which is overlapped or duplicated by this proposed amended regulation has been identified; that no indication that the amended regulation would have a significant economic impact on small business has been received; and Amended Regulation 5002 be adopted as to subsection (a) only. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Butler, it was unanimously

**VOTED:** To adopt Regulation 5002 – Additional Circumstances Warranting Recusal, as amended.

Staff Attorney Gramitt stated that both amendments will be filed with the Secretary of State and would be effective twenty days after filing. As to Regulation 5002(b), he stated that the Staff will start reworking that subsection and present it for review at an upcoming meeting. He added that the Commission was out of rulemaking but could enter back into it in the future. He stated that that Staff will also address Question 10 on the Financial Disclosure Statement at a future meeting. He said that the form cannot be changed for this year but perhaps we could include an insert.

At 10:47 a.m. the Commission recessed for a short break, at which

time Commissioner Magro left the meeting.\*\*\* The Commission returned from break at approximately 10:55 a.m. The next order of business was a motion to seal the minutes of the January 10, 2012 Executive Session. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Cerullo, it was unanimously

**VOTED:** To seal the minutes of the January 10, 2012 Executive Session.

The next order of business was an online filing status update. Staff Attorney Gramitt stated that he and Michelle Berg have been working with RI.gov and the Rhode Island Department of Information Technology (“DOIT”). He noted that this project involved much more work than anticipated but it was on track for this year. He stated that the goal is to have the online system live by the time the forms are mailed out in the middle of March, 2012. He stated that each person required to file will receive a PIN and username in order to log into the system. He explained that the database will save the responses and generate a PDF once the form is complete, at which time the statement will be filed electronically at the Commission. He stated that DOIT and RI.gov have designated developers solely for this project and that the Commission has received support from the Department of Administration. He noted that online filing will not require a notary, but will instead be sworn under the penalty of perjury. Staff Attorney Gramitt explained that the system will provide a receipt and email confirmation to the public official that their

**statement was filed with the Commission.**

**The next order of business was the Director's Report. Executive Director Willever reported that there are ten complaints, two advisory opinions, and one superior court litigation pending, and that seven APRA requests have been fulfilled since the last meeting. With respect to the tentative schedule for 2012, he explained that there was only one meeting in November 2012 due to the state holidays for Election Day, Veterans Day and Thanksgiving, but added that any necessary schedule changes could be made as needed.**

**Staff Attorney Gramitt informed that in response to some Commissioners' requests, the Staff will start sending an electronic meeting packet to the Commissioners for the next meeting. He said that it will be a PDF document and noted that the Commissioners will still receive the hard copy binder ahead of the meeting.**

**The next matter was New Business. Chair Cheit asked that the already discussed issues regarding Regulation 5002 and the Financial Disclosure Statement be placed on an upcoming agenda. At 11:06 a.m. upon motion made by Commissioner Heffner and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To adjourn.**

**Respectfully**

**submitted,**

---

**Harsch**

**J. William W.**

**Secretary**